

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
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DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

NATIONAL COACH WORKS OF VIRGINIA
Respondent

Case No.: I-00-10082

DECISION AND FINAL ORDER

I. Introduction

On August 29, 2000, the Government served a Notice of Infraction upon Respondent National Coach Works of Virginia alleging that it violated 20 DCMR 900.1, which prohibits certain motor vehicles from idling their engines for more than three minutes. The Notice of Infraction alleged that the violation occurred between 3:03 and 3:09 PM on August 7, 2000 in the 2100 block of Virginia Avenue, N.W. and sought a fine of \$500.00.

On September 8, 2000, Respondent filed a timely plea of Admit with Explanation, together with a request for suspension or reduction of the fines. On the same day, this administrative court issued an order permitting the Government to reply to Respondents' plea and request within ten days. That deadline has passed and the Government has not filed a reply.

II. Summary of the Evidence

Respondent states that its bus was waiting to start a commuter run, and has submitted a copy of a schedule showing that three of its buses were scheduled to depart from Virginia Avenue and D Street at 3:50 PM. It also attaches a printout of an e-mail distributed by the American Bus Association claiming that a recent ruling in the District of Columbia determined that §900.1 is preempted by federal law, specifically 49 C.F.R. 393.52, which established minimum braking standards for buses. According to the e-mail, §393.52 “requires a driver to idle an engine ‘for an appropriate period of time,’ (possibly up to 15-20 minutes) to develop sufficient brake pressure.” Respondent seeks “dismissal of the infraction or at the very least a reduction in the fine” based on that e-mail.

III. Findings of Fact

1. By its plea of Admit with Explanation, Respondent has admitted violating 20 DCMR 900.1 on August 7, 2000.
2. Respondent’s bus idled its engine between 3:03 and 3:09 PM on August 7, 2000.
3. Respondent’s bus was scheduled to begin its commuter run no earlier than 3:50 PM.
4. Respondent has not provided any evidence showing how much engine idling time was needed for its bus to develop sufficient air pressure to operate its brakes safely.

IV. Conclusions of Law

1. Respondent violated 20 DCMR 900.1 on August 7, 2000.
2. Respondent's explanation for its violation is wrong as a matter of fact and as a matter of law. Even if I were to credit Respondent's assertion that it *could* take as long as 15 or 20 minutes to build up sufficient air pressure to operate the brakes on the bus, it would not explain why Respondent's bus was idling its engine between 3:03 and 3:09 PM, more than forty minutes before its scheduled departure time.
3. Respondent is also wrong about the state of the law on the relationship between §900.1 and 49 C.F.R. 393.52. Section 393.52 contains braking performance standards, but does not require buses to idle their engines for any fixed period of time in order to meet those standards. Indeed, that regulation does not even mention idling of an engine. Nor is there any ruling in the District of Columbia that §900.1 is invalid. The e-mail quoted by Respondent may be referring to a decision of an administrative judge of the Department of Consumer and Regulatory Affairs in *DCRA v. Indian Trails, Inc.* No. 99-OAD-2310-H (February 22, 2000). As this administrative court pointed out in *DOH v. Chesapeake Charter, Inc.*, OAH Order Denying Motion for Reconsideration, No. I-00-10036 (August 15, 2000), the respondent in *Indian Trails* apparently proved that its particular bus could not operate in compliance with federal safety standards without idling its engine in excess of three minutes. Like the respondent in *Chesapeake Charter*, however, Respondent presented no evidence in this case to

support its claim that it could comply with the federal braking standards only by idling the engine on the bus for more than three minutes. *See DOH v. Chesapeake Charter, Inc.*, OAH Final Order No. I-00-10036 (July 28, 2000).¹ Respondent certainly has not shown that it needed to idle the engine of the bus for more than forty minutes in order to comply with §393.52. Thus, the federal braking standards do not excuse or mitigate in any way Respondent's admitted violation of §900.1. Accordingly, I will impose the full \$500.00 fine for that violation.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2000:

ORDERED, that Respondent shall cause to be remitted a single payment totaling **FIVE HUNDRED DOLLARS (\$500.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's license or permit pursuant to D.C. Code § 6-2713(f).

/s/ **11-07-00**

John P. Dean
Administrative Judge

¹ Copies of the *Chesapeake Charter* decisions are attached to this Order.